CHEAH FOONG CHIEW

v.

LEMBAGA JURUTERA MALAYSIA

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
ABDUL MALEK AHMAD JCA
DENIS ONG JCA
[CIVIL APPEAL NO: W-02-401-1996]
4 MAY 1999

ADMINISTRATIVE LAW: *Exercise of judicial functions - Domestic tribunal - Jurisdiction to hear charges against member - Judicial intervention on jurisdiction of tribunal - Principles and policies - Whether tribunal can determine own jurisdiction - Whether issue of jurisdiction to be raised before tribunal itself - Engineers and disciplinary proceedings*

PROFESSIONS: *Engineers - Board of Engineers - Domestic tribunal - Whether tribunal can determine own jurisdiction to hear charges against member - Whether issue of jurisdiction to be raised before tribunal itself - Registration of engineers - Registration of Engineers Act 1967, ss. 3, 15, 20*

This was an appeal from the decision of the High Court dismissing the appellants's originating summons. The appellant was a registered engineer practising under the name of Sigoh Din Sdn Bhd ('Sigoh'). Due to complaints lodged by the Ministry of Defense Malaysia for works undertaken by Sigoh, the respondent Board commenced disciplinary proceedings against the appellant grounded on rules made pursuant to the Registration of Engineers Act 1967 ('the said Act'). The appellant applied to the High Court for a declaration that the alleged contravention of the rules which was based on actions that took place prior to 16 January 1987 (the date of coming into force of the Registration of Engineers (Amendment) Act 1987) would not enable disciplinary proceedings to be taken against the appellant under s. 15 of the said Act. The issues before the court were on the jurisdiction of the respondent under s. 15 of the said Act and the power of the court to intervene in such proceedings.

Held:
Per Shaik Daud Ismail JCA

[1] As a matter of judicial policy, the court should not intervene but should allow the domestic tribunal to proceed and decide the matter. Domestic tribunals can determine their own jurisdiction. It was for the appellant to raise the issue of jurisdiction before the respondent itself which would be capable of making a decision.

[2] Apart from the respondent's power to decide on its own jurisdiction, there is an appeal process under s. 20 of the said Act, where the appellant can appeal to an Appeal Board chaired by a High Court judge. The appellant's application to the court was thus premature.

[3] It would be wrong for the court to intervene at this stage as that would amount to restraining the respondent from hearing the charge against the appellant and pre-empt the respondent's right under the law to adjudicate the matter.

[Appeal dismissed with costs.]

Case(s) referred to:
Government of Malaysia & Anor v. Jagdis Singh [1987] 1 CLJ 451 ***(refd)***
Rex v. Fulhan, Hammersmith & Kensington Rent Tribunal, ex p Zerek [1951] 2 KB 1 ***(refd)***

Legislation referred to:
Registration of Engineers Act 1967, ss. 3, 7A, 15(1), 20, 26
Registration of Engineers Rules 1972, r. 25

For the appellant - WSW Davidson (Evelyn Khoo with him); M/s Skrine & Co
For the respondent - Dato' Dominic J Puthucheary (Firoz Hussein Ahmad Jamaluddin with him); M/s Puthucheary, Firoz & Asmet

[Appeal from High Court, Kuala Lumpur; Originating Summons No: R-2-24-05-1993; [1994] 2 CLJ 516]

Reported by Ling Hea Hoon

JUDGMENT

Shaik Daud Ismail JCA:

This is an appeal from the decision of the High Court which had, on 1 November 1996, dismissed an originating summons filed by the appellant.

The facts leading to this dismissal were that the appellant was a registered director engineer practising under the name of Sigoh Din Sdn. Bhd., a body corporate of Consulting engineers approved to practise as such under s. 7A of the Registration of Engineers Act 1967 (the said Act) by virtue of which the appellant was a registered engineer. The Ministry of Defence had awarded a contract to Sigoh Sdn. Bhd. to construct and complete an ammunition depot in Melaka. Due to some complaints lodged by the Ministry of Defence, the respondent, the Board of Engineers established under s. 3 of the said Act, commenced disciplinary proceedings against the appellant. He was charged under r. 25 of Part IV (Code of Professional Conduct) of the Registration of Engineers Rules 1972 which were made under s. 26 of the said Act.

Before the disciplinary proceedings could commence, the appellant applied to the court by originating summons seeking a declaration that the alleged contravention of the Registration of Engineers Rule 1972, based on circumstances and facts that took place prior to January 1987, would not enable the disciplinary action to be taken against the appellant under s. 15 of the said Act. In addition the appellant also sought a prohibitory injunction to prevent the respondent from investigating against the appellant.

The records also showed that earlier the appellant applied for an interim injunction preventing the respondent from investigating against him until the completion of the proceedings. Another High Court granted the injunction *ex parte* but on an application by the respondent, the *ex parte* interim injunction was set aside.

The appeal before us is in fact on the question of jurisdiction of the respondent under, and their powers under s. 15 of the said Act.

Now, it is common ground that the alleged misconduct of the appellant to be enquired into by the respondent occurred before 16 January 1987, the date of coming into force of the Registration of Engineers (Amendment) Act 1987 (Act A 662) which amended the said Act. It is also common ground that the charge against the appellant to be enquired into by the respondent is under s. 15(1) of the said Act prior to its amendment, which reads:

> S. 15(1). Subject to this section the Board may order the cancellation of the registration of any Engineer under any of the following circumstances:
>
> (a)-(f) – not applicable;
>
> (g) if he is found by the Board to have contravened the Act.
>
> (h) not applicable.

Section 15(1) is to be found in Part IV of the said Act and it was amended by Act 662:

> (g) if he is found by the Board to have contravened, or failed to comply with, this Act or any regulations made thereunder.

It was the contention of the learned counsel for the appellant in the High Court as well as before us that since the alleged act of the appellant for which he was charged before the respondent, was in respect of the provisions prior to amendment of the said Act, he could only be charged for offences under the said Act and not under any regulations which only came into effect by the amendment. As mentioned earlier the appellant's challenge is on the jurisdiction of the respondent.

Learned counsel for the respondent argued that there is a distinction between the jurisdiction of the respondent and the evidence upon which the charge is to be based. He further contended that so far as the jurisdiction issue is concerned, there is a policy issue at stake. While he conceded that the courts have the powers to intervene, he questions whether the court should intervene at this stage of the proceedings on the issue of jurisdiction.

We agree with the contention of the learned counsel for the respondent that although the courts have the power to intervene, in the circumstances of this case, we should not intervene on the issue of jurisdiction. The correct principle on this is as laid down in *Government of Malaysia & Anor. v. Jagdis Singh* [1987] 1 CLJ 451; [1987] 2 MLJ 185. In that case the respondent had received notices of additional assessment for income tax for the years 1979 to 1984 inclusive. The respondent's accountant wrote to the Department of Inland Revenue, informing them of the respondent's desire to appeal against the additional assessments. However, the respondent filed a motion for an order of *certiorari* to quash the said notices of additional assessments on the grounds that the notices of assessments are based on conjecture and have been issued maliciously and as a vindictive act. The High Court granted the respondent's application. On appeal, however, the then Supreme Court allowed the appeal and held that:

> (1) the discretion is still with the courts to act by way of judicial review but where there is an appeal provision available to the applicant, *certiorari* should not normally issue unless there is shown a clear lack of jurisdiction or a blatant failure to perform some statutory duty or in appropriate cases a serious breach of principles of natural justice.

It is clear from this decision that as a matter of judicial policy, the normal rule is not for the court to intervene but to allow the domestic tribunal to proceed and decide the matter. It is clear that domestic tribunals can determine its own jurisdiction. It is for the applicant to raise the issue of jurisdiction before the tribunal itself which is capable of making a decision. In *Rex v. Fulhan, Hammersmith and Kensington Rent Tribunal, Ex parte Zerek* [1951] 2 KB 1, Devlin, J at p. 10 said:

> In my opinion the argument on behalf of the applicant is based on a misconception of what it is that a tribunal in cases such as this is doing. When, at the inception of an inquiry by a tribunal of limited jurisdiction, a challenge is made to their jurisdiction, the tribunal have to make up their minds whether they will act or not, and for that purpose to arrive at some decision on whether they have jurisdiction or not.

Apart from the respondent's power to decide on their jurisdiction, under s. 20 of the said Act, there is an appeal process, where the appellant can appeal to an Appeal Board chaired by a High Court judge. We are of the view that the appellant's application to the court, in the circumstances of this case, is premature. We feel that it would be wrong for the courts to intervene at this stage as it would tantamount to restraining the respondent from hearing the charge against the appellant, and would pre-empt the respondent's right under the law to adjudicate the matter. We are of the view that the learned judge was right when he said that it was premature for the court to injunct the respondent in exercising their powers. We therefore dismissed the appeal with costs and ordered the deposit to go to the account of costs.